IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 15020 of 2004(K)

(ORDER IN O.S.NO.258 OF 2002 OF THE MUNSIFF COURT,PARAPPANANGADI)

PETITIONER:

KUNHAMMED HAJI, S/O.KAZHUNGUM THOTTATHIL ALAVIKUTTY, THIRURANGADI TALUK, PERUVALLOOR AMSOM, KERNALLUR DESOM, P.O. PARAMBIL PEEDIKA.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. KUNHAPPUTTY HAJI, S/O.KAZHUNGUM THOTTATHIL ALAVIKUTTY, THIRURANGADI TALUK, PERUVALLOR AMSOM, KERNALLUR DESOM P.O. PARAMBIL PEEDIKA.

2. PATHUMMU, D/O.KAZHUNGUM THOTTATHIL ALAVIKUTTY, DO. DO.

3. AYISSA, W/O.P.ASSAN, DO. DO.

4. NAFEESAKUTTY, W/O.ALAVI, DO. DO.

5. PATHUMMEYI, W/O.KAZHUNGAM THOTTATHIL ALAVIKUTTY, DO. DO. DO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 15020 OF 2004)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.258 OF 2002 ON THE FILE OF THE MUNSIFF OF PARAPPANANGADI DATED 3.12.2002.

EXT.P2: TRUE COPY OF THE ORDER OF THE MUNSIFF COURT, PARAPPANANGADI IN O.S.NO.258 OF 2002 DATED 6.3.2004.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.15020 of 2004

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Dated: 29th May, 2007

JUDGMENT

Ext.P2 order passed by the learned Munsiff virtually upholding a contention raised by the defendants in a suit for declaration and consequential injunction that the valuation of the suit is improper and the court fee paid is inadequate is under challenge. Mr.T.Krishnanunni, learned counsel for the petitioner submits that it is not at all proper on the part of the court below to have entered a finding that the income from the property as estimated by the plaintiff at Rs.1500/- is quite meagre and unacceptable even before the plaintiff has taken steps to show as to what is the correct annual income from the properties so that the suit could be valued under Section 7 of the Court Fees Act. I find force in the above submission of the learned counsel. The finding in Ext.P2 that the annual income as suggested by the plaintiff is meagre and unacceptable is vacated. The plaintiff shall take steps to show the proper valuation of the property as already directed in Ext.P2 and the court below will take fresh decision on the correct annual income from the property on the

basis of the materials which the plaintiff brings on record. To this extent Ext.P2 is modified.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**